The City of New York

POLICE DEPARTMENT

September 2, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Rohan McKenzie
Tax Registry No. 921560
Transportation Bureau
Disciplinary Case No. 2011-5672

The above-named member of the Department appeared before the Court on January 21 and March 31, 2014, charged with the following:

1. Said Sergeant Rohan McKenzie, while assigned to the Traffic Enforcement District, on or about and between September 1. 2010 and January 5. 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant on multiple occasions issued No Charge Releases for vehicles for which he had no authorization to release.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Sergeant Rohan McKenzie, while assigned to the Traffic Enforcement District, on or about and between September 1, 2010, and October 19, 2010, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Sergeant wrongfully removed a summons from a vehicle which was located at the Bronx Tow Pound. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Marissa Gillespie and Christine M. Maloney, Esqs., Department Advocate's Office. Respondent was represented by Eric Sanders, Esq., The Sanders Firm PC.

Respondent pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Liam Ryan and Sergeant John Krivinsky as witnesses.

Lieutenant Liam Ryan

Ryan, assigned to the Traffic Enforcement District (TED), was the integrity control officer (ICO) at the Manhattan Tow Pound. He was familiar with the no-charge release (NCR) policy enforced by TED. The NCR policy was a set of guidelines and procedures used to determine whether a vehicle could be released from the tow pound without fee or charge.

Department's Exhibit (DX) 2 was a memorandum from Inspector Michael Pilecki, commanding officer (CO) of TED, to tow pound supervisors, dated April 1, 2008. In the memorandum, Pilecki laid out the NCR guidelines. DX 2 stated that it was necessary for the driver of a towed "Law Enforcement" (LE) vehicle (including a vehicle from the New York City Police Department [NYPD]) to obtain from the Operations Unit an "OU number." In order to obtain an OU number, the driver needed to present to the OU a letter from his commanding officer (CO).

DX 2 further stated that in cases of towed "Government Owned" (GO) vehicles (those other than "Law Enforcement"), an NCR would be granted only when (a) the vehicle had a valid agency or official business permit, (b) the driver presented a report from "an Assistant Commissioner or above" at her agency showing that the vehicle was on official business and was parked in an "official business defense location," or if not, "the circumstances are considered an emergency for that agency."

DX 2 also provided that in no case would a parking summons issued to a towed LE or GO vehicle be voided or withdrawn by a member of the Parking Enforcement District (PED).

Ryan testified that the NCR guidelines also applied to situations where the towed vehicles were the personal vehicles of government employees conducting official business. They were to go through the same procedure. "[I]f a government employee's vehicle is towed, he or she must – if it's in the course of . . . his or her employment, he or she must obtain . . . a letter from an assistant commissioner of the respective agency, whether it's DEP [Department of Environmental Protection], or conEd [a reference to the Consolidated Edison Company of New York, which is not actually a government agency], but he or she must obtain a 49 and go through the same procedure, you know, get an OU number from the Operations Unit." Ryan continued, "They must articulate . . . that the vehicle had been used during the course of the individual's duty, and he or she must articulate that there was an emergency, that the vehicle was responding to some type of emergency, that's why the vehicle was towed."

Ryan testified that NCRs were discussed at ICO meetings that were held approximately once every three months. The meetings usually were chaired by Pilecki. It was made clear that under no circumstances should a vehicle be released without the "necessary checks and

balances." This meant that an LE individual had to have an OU number and a "city employee" had to have "a 49 from his assistant commissioner or higher."

On cross examination, Ryan testified that there was an "internal handbook," issued by the "Traffic Department," instructing tow pound employees on their procedures.

Ryan stated that DX 2 likely was issued at an ICO meeting. Pilecki addressed the issue of NCRs for personal vehicles at "practically every meeting." Ryan recalled Pilecki stating that "under no circumstances at any time were we just to release a vehicle just on demand to an individual who showed up at the NYPD tow pound, whether it's a member of the service or a city worker or a federal worker. There always had to be a checks and balances; there always had to be a procedure that he or she had to follow prior to gaining release of the vehicle." The guidelines inhibited people from attempting to get NCRs on their personal vehicles. Ryan explained, "I think every employee of the NYPD knows that if his vehicle is unfortunate enough to be towed to the tow pound, he's got an administrative procedure that he has to follow prior to gaining the release of the vehicle." Ryan was certain that Pilecki created a written policy regarding NCRs for personal vehicles and he believed he had seen one, as the ICOs were constantly being given updated memos and directives.

Upon questioning by the Court, Ryan admitted that DX 2 did not say anything about LE vehicles needing a '49' from the CO. This was something that was discussed at other meetings.

Ryan gave "my definition" of "Law Enforcement" for the purposes of DX 2 as NYPD or "federal police." He later added District Attorney's Offices upon suggestion. "Government" vehicles could be from something like the DEP or conEd. If a government agency did not have assistant commissioners, an NCR could not be given.

The Court asked about assistant district attorneys (ADAs) as an example, as they neither had commanding officers nor issued '49's. Ryan answered that they would have to get a '49.' He added that this could be given by a "ranking officer" or "superior."

Sergeant John Krivinsky

Krivinksy, assigned to the Internal Affairs Bureau (IAB), conducted the investigation involving Pilecki and Respondent's release of vehicles from the Bronx Tow Pound (BXTP). DX 1 was a list of the seven vehicles that Respondent released without charge between September 1, 2010, and January 5, 2011. Car number 1 was the personal vehicle of Tanesha Biggett, an employee of the Department of Homeless Services (DHS), who had received a summons for an expired registration. Car 2 was the personal vehicle of Henry Mendez, an Emergency Medical Technician (EMT) for the New York City Fire Department (FDNY). Mendez received a summons for parking in a "No Parking between 9am and 9pm" zone. Car 3 was the personal vehicle of Nayadeth Vargas, a DHS employee, who received a summons for double parking. Car 4 was the personal vehicle of Norma Padilla-Riss, who received a summons for parking in a "No standing except authorized vehicles" area of the Bronx courthouses. Car 5 was the personal vehicle of Police Officer Jameson Masker that was parked in a "No Parking Anytime" area at traffic court. Car 6 was the personal vehicle of Tanisha Stewart, a substitute teacher, who received a summons for "No Parking School Days 7am to 4pm." Car 7 was the personal vehicle of Police Officer Jose Garcia, who received a summons for parking in a bus stop.

Krivinsky asserted that during Respondent's official Department interview in July 2011, Respondent admitted that he was unauthorized to release the vehicles from BXTP. During a subsequent official interview in July 2012, Respondent again admitted that he was unauthorized

to release the vehicles "but he provided further explanation." Respondent asserted that he was "permitted to do so by Inspector Pilecki and this information was obtained through meetings at the Chief of Transportation's office."

According to Krivinsky, with regard to the summons on Biggett's vehicle, Respondent stated that "the summons was removed from the vehicle but he wasn't sure particularly if the summons was voided."

Pilecki stated at his interview that he did not think Respondent committed any type of "misconduct," i.e., that he did something corrupt. Rather, the NCRs issued by Respondent were a "procedural error." Consequently, Pilecki allowed Respondent time to correct the errors before notifying IAB of the matter.

On cross examination, Krivinsky testified that he did not ask Respondent why he released each of the vehicles at issue, nor did he follow up to find out what happened with the summons that was issued to Biggett. Krivinsky was asked if Respondent said that he removed the summons from Biggett's vehicle. Krivinsky answered, "After review of the interview I believe that's what he said, yes."

Krivinsky testified that Pilecki told investigators that while ICOs had no discretion to issue NCRs, there were numerous types of vehicles, besides LE and GO vehicles, that could be released without charge. These vehicles included stolen vehicles, diplomatic vehicles, handicap plate vehicles, cases when a summons was dismissed, and "a few others."

Upon questioning by the Court, Krivinsky stated that his investigation of Respondent began after Pilecki contacted IAB. Krivinsky began an investigation of Pilecki in August 2012 in response to allegations that Pilecki knew of Respondent's misconduct and took steps to cover it up. At that time, an earlier investigation regarding NCRs by the Chief of Transportation

Investigations Unit was concluding. The allegation regarding the removed summons came after documents pertaining to the NCRs revealed an outstanding balance due on summonses.

Respondent's Case

Respondent called Audrey Williams, Inspector Michael Pilecki, and Kathleen Rickard as witnesses. He also testified on his own behalf.

Audrey Williams

Williams retired from the Department after 23 years as a traffic manager, a civilian position. She explained the change in the NCR policy after the 1996 merger between the Department of Transportation's Traffic Division and the NYPD, which led to the creation of PED. At a citywide staff meeting in 2008, Pilecki ordered that NCRs only could be given by ICOs assigned to the tow pounds and not traffic managers.

Williams understood NCRs as "several components. You had the conditional which meant that it was released upon conditions of letters depending on who was towed." Williams contended that the NCR policy implemented by Pilecki included not only LE and GO vehicles, but also applied to "police officers or members of service," whether on or off duty and in personal vehicles. Williams did not know of an actual list indicating what vehicles were subject to the NCR policy, but "there was an understanding that we had . . . if they were working on emergency situations, if they had work that they had to do, depending on what happened."

Williams asserted that Pilecki authorized the ICOs to use discretion when issuing NCRs and make the decision "depending on the situation," relying on relevant factors, such as space availability.

Upon questioning by the Court, Williams testified that the policy for employees of city agencies other than the NYPD was that they needed a letter from an agency head stating that the operator of the vehicle was on official business. For agency properties throughout the city, tow operators were expected to know what areas were self-enforcement zones (SEZ) for various agencies. Tow operators were not supposed to tow vehicles out of that area. Under Pilecki's orders, if personal vehicles were towed near agency offices, NCR availability would depend on whether the drivers could present letters from their agencies saying they were on official business, and on where the car was parked.

According to Williams, if an employee of an agency parked in a SEZ and the vehicle was towed, that vehicle was taken "in error." This was evident because "all we had to do was look at our list of self-enforced and we'd see exactly where the car came from" and the vehicle would be released, no letter necessary. For vehicles parked outside of the SEZ, ICO discretion could be used to determine whether a letter from an agency head would allow for a NCR.

Inspector Michael Pilecki

Pilecki, commanding officer of TED, was reviewing the BXTP NCR logs when he saw that Respondent had released several vehicles from that tow pound without a charge. When Pilecki first questioned Respondent, Respondent replied, "I couldn't give them a conditional?" Pilecki testified that a conditional release (CR) was when, under "extraordinary circumstances" (EC) when a letter could not be secured, an NCR could be issued to GO vehicles with seven days allotted for the letter to be delivered. The vehicle had to be on official business, with a permit, and had to be parked in an official business defense location (listed on the back of the permit). The letter had to be from an assistant commissioner or above. If after seven days there was no

letter and the Parking Violations Bureau had not dismissed the summons, it was processed and payment was required.

Pilecki told Respondent that he could not give the drivers a conditional. He gave Respondent seven days to collect the payments from the individuals to whom the vehicles were released. After Respondent failed to do so in the allotted time, Pilecki contacted IAB.

Pilecki testified that a vehicle release agreement (VRA), as required by city law, was when a motorist arrived at the scene while her car was in the process of being towed. The motorist could agree to pay a fee in order to avoid the tow.

Pilecki described SEZs as geographic areas that surrounded precincts only, within which precinct personnel enforced parking regulations.

According to Pilecki, a NCR could be issued in several different instances, such as for vehicles reported stolen, vehicles involved in the "motion picture industry," diplomatic vehicles, LE vehicles, and "several others" that Pilecki would have to "refer to the manual" to recall. DX 3 was the Tow Operations manual (TOM). It detailed the "standard" procedures for the "release of eligible vehicles at no charge." According to Pilecki, the manual contained the NCR policy. All ICOs had access to the manual.

On cross examination, Pilecki asserted that he never told traffic managers or ICOs that they could use their discretion in spite of a written policy.

Upon questioning by the Court, Pilecki stated that Respondent could not give CRs for the vehicles in question because there were no ECs.

"Hardship cases" for non-government-owned vehicles also constituted ECs. This would be where a CR would be in the Department's "best interests," "where children might be involved," if the vehicle was an ambulance or hearse, or "something of that nature." As an

example, Pilecki spoke of a vehicle that he conditionally released when he was informed that the motorist was homeless, living out of that car with no other place to reside. Days later, when the motorist received his paycheck, he returned and paid the fee. Pilecki testified that this kind of CR still required a request from a higher official. Simply parking in an illegal spot was not an EC.

Pilecki clarified that for a NCR to be issued for a GO vehicle, a business defense location was required. These were listed on the back of the parking permit. Pilecki also clarified that an NCR could be issued for a personal vehicle that was used with authorization for official business.

Pilecki maintained that for LE vehicles where there was no commanding officer – for example, the Federal Bureau of Investigation or United States Attorney's Office – he would not accept a letter from a comparable official. Instead, he "would refer them to the Operations Unit." Pilecki insisted that the Department's policy for NCRs was "delineated in the Tow Operator's Manual – those are listed as the official Department circumstances under which a vehicle could be issued a no-charge release."

On re-direct examination, Pilecki indicated that he did not know if there could be a SEZ around a courthouse.

Kathleen Rickard

Rickard, a 20-year member of the NYPD, retired in April 2011 as a sergeant. Prior to retirement, Rickard was an ICO in the Traffic Control Division, part of PED.

Rickard explained that during one of Pilecki's monthly ICO meetings, he authorized them to use their discretion to release "improperly" towed vehicles, but only after conducting an

investigation. At some point after that, Pilecki issued a '49' detailing the "standard operating procedure" for both government- and privately-owned vehicles.

Rickard had never seen or heard of the TOM. She never handled a hardship case and would have referred such a case to her supervisor. She never attended any training that explained the criteria used to release vehicles.

On cross examination, Rickard affirmed that the NCR policy issued by Pilecki was subject to ICO discretion for certain vehicles. Private vehicles were not addressed in the memo. She was not aware of any written policy regarding privately owned vehicles. Rickard insisted that any matter involving LE or GO vehicles would be referred to the OU.

Rickard defined an improperly towed vehicle as one that was towed when it should not have been, such as a Metropolitan Transportation Authority police officer that parked in an SEZ with a "no parking except MTA police" sign but did not have the placard present. She also claimed that each borough and precinct had their own procedures.

On re-direct examination, Rickard clarified that a SEZ could surround "a police station, a fire department, different city agencies or federal agencies." Rickard testified that it could be a discretionary release if a person was parked in a SEZ and the person was an employee of that agency. For improperly towed vehicles, Rickard would use her discretion. If there was a finding that a vehicle had been towed improperly, a NCR would be issued.

On re-cross examination, Rickard clarified that an NCR had to be listed in the log, but she would call Pilecki as a courtesy. This would be for private vehicles though. Rickard would refer matters of GO vehicles to the OU.

Rickard clarified that a NCR only would be issued after she conducted a full investigation, which included contacting the command or agency that the vehicle belonged to

and ascertaining the purpose of that vehicle. The scope of the investigation would depend on the case, as Rickard testified that she might not go to a site or contact the agency if she was familiar with the area or the driver had presented employment identification.

Upon questioning by the Court, Rickard was unsure of whether SEZs were established by the precinct or at the borough level. "Maybe Inspections." There was no formal list of SEZs provided for officers or traffic and parking enforcement. Improperly towed vehicles did not need an OU number and Rickard could use her discretion to release them.

Respondent

Respondent, a 16-year member of the Department, presently was assigned to the Traffic Management Center. Previously, he was an ICO in TED. When Respondent first was assigned as the ICO at BXTP, he did not receive training. He was told to follow other ICOs and learn what they do.

Respondent testified that he learned NCRs were for "vehicles that were improperly towed, should not have been towed, or towed by accident[]." He asserted that there were SEZs all over the Bronx. They surrounded precinct station houses, courthouses, a DHS facility and school buildings. Schools could receive a SEZ for a given day if there was a special event. There also was "relaxed enforcement." This was used if there was a special event, such as a funeral of a dignitary. It was a similar concept to a SEZ.

Respondent testified that he never had seen the TOM. He affirmed that there were meetings where NCRs were discussed but these were rare. Pilecki stressed that a NCR only could be issued by an ICO, but no documents or written policy regarding Pilecki's instructions

were provided at that time. Respondent acknowledged that he had seen DX 2. There was no '49,' however, addressing personally-owned vehicles.

Thus Respondent used his discretion to release the seven vehicles in question, consistent with Department policy. Car number 1 involved a DHS facility, which was a SEZ. Car 2 was parked at Lincoln Hospital by an FDNY EMT. Respondent stated that Lincoln did regional training for EMTs. "I was told that this is always a self-enforced area." Car 3 again involved a DHS facility. Car 4 was parked near the Bronx courthouses. This also was a SEZ and Respondent "always had the authority to release this vehicle." Car 5 belonged to an on-duty police officer who went to traffic court in the Bronx. Car 6 was located in a SEZ around a school. The motorist was a teacher at the school on the date that the car was towed. She produced documentation from the "Board of Ed." Car 7 belonged to an off-duty police officer that had parked in a bus stop. He was entitled to a VRA because when he arrived at the scene before the tow truck left, the truck operator refused to release the car even though the officer had the keys, his license, and registration. It was an improper tow and an NCR thus was in order.

On cross examination, Respondent testified that he attended Pilecki's meetings often. NCRs were discussed sparingly and were not an issue with Pilecki. Respondent acknowledged, however, that DX 2 was issued in 2008 at "the biggest and most important tow pound meeting [Pilecki] has ever held." Media attention had been drawn to the topic. Respondent understood DX 2 as meaning that when "governmental" vehicles were towed, "for any city agencies, the ICO can assist" the motorist in obtaining an OU number. It was the OU's decision whether an NCR would be issued. For vehicles privately owned by individuals, however, the ICOs "have discretion, we have flexibility, we can release anything that is not part of this governmental tow

as long as we investigate it and make sure it's a correct release." He knew this because it was "[c]ommon practice and what was always said by Inspector Pilecki."

Respondent claimed that for SEZs surrounding a courthouse, a city, state, or federal employee was permitted to park even if she did not work for the courthouse, as long as the employee was there in an official capacity. A NCR also could be given to a defendant that had business at the courthouse. Respondent's decision to issue a NCR for a motorist parked in a SEZ would be based on the evidence, the location, documentation, and his discretion. Respondent went to each location of the seven cars before he issued a release.

Respondent denied removing the summons on car number 1.

FINDINGS AND ANALYSIS

What is the difference between a policy and a practice? To Respondent in this case, the answer is everything. Respondent was assigned as the integrity control officer of the Bronx Tow Pound. This was part of the Traffic Enforcement District. A recurrent issue for the command was no-charge releases – a practice where a towed vehicle could be released from the pound without the motorist having to pay a fee. Evidence at trial established that in prior years, the NCR practice was more or less totally discretionary. This eventually led to media attention and claims that discretion really was favoritism, and that some people essentially were being allowed to park wherever they wanted.

In 2008, Inspector Michael Pilecki, commanding officer of TED, held a meeting with all the ICOs, as well as the traffic managers, the civilian employees who supervised the line enforcement personnel. Pilecki told the gathered employees that going forward, NCRs only would be issued to government-owned vehicles using a standard operating procedure. He laid

out the new procedure in a '49' (DX 2). For vehicles owned of law enforcement agencies (LE), the agency could contact the Operations Unit, receive an OU number, and the OU would take it from there. For vehicles owned by other government agencies (GO), the vehicle had to be on official business, with a permit, and "an Assistant Commissioner or above" had to send TED a report detailing the facts and circumstances.

Respondent agreed that the stated policy was in place. He averred, however, that the '49' did not encompass every situation in which an NCR was available. First, there were self-enforcement zones, areas like those surrounding a precinct station house in which agents generally were to abstain from issuing summonses because the precinct itself would enforce any traffic regulations within that area. Respondent's witnesses testified, though, that there were other SEZs: areas around city agency installations like schools and homeless outreach facilities. The gist of the testimony was that SEZs were a semiformal affair. They might have been determined at the borough level but there did not appear to be an official list, certainly not a precinct-by-precinct list. Members of the Department just were supposed to know.

According to Respondent, individuals whose personal cars were towed from a SEZ could ask for an NCR at the pound. ICOs retained the discretion to issue NCRs, for example, in cases where a teacher parked near a school or a firefighter parked near a firehouse. Respondent contended that he even had the discretion to give an NCR to someone who had business at the courthouse but had little choice but to park nearby.

Respondent's witnesses also detailed two other instances where NCRs could be issued. One was when the motorist arrived as the car was being towed. The motorist was entitled to enter into what was called a vehicle release agreement: the car was supposed to be released from the tow truck but the motorist had to agree to pay a fine. If the VRA rule was violated by the

tow truck operator, Respondent said that an NCR would be issued at the pound. Further, there were cases of "improper towing." There were situations where the tow truck operator perhaps unknowingly towed a car that should have been left alone. An example was a firefighter who left his parking plaque at home but otherwise would have been legally parked near his firehouse. These drivers too, Respondent asserted, could be issued NCRs.

Specification No. 1 charges that Respondent "on multiple occasions issued No Charge Releases for vehicles for which he had no authorization to release." It was not disputed that Respondent issued NCRs to seven motorists. Two were issued to Department of Homeless Services employees, two to police officers, one to an FDNY EMT, and one to a substitute teacher. One was issued near one of the Bronx courthouses, but Respondent could not remember if the motorist was employed in connection with the courts. Respondent explained that he used discretion in each of these instances to return the motorist's car without charging the fee.

The Department proved that the NCRs at issue did not fall within the guidelines of the 2008 '49.' But that also was Respondent's defense: NCRs remained available, as a matter of discretion, in cases other than LE or GO vehicles.

There was no explicit statement by any witness that NCRs were not available under stated policy or practice in the situations at issue. On the contrary, other evidence supported Respondent's contention that discretion remained available. In its opening statement, the Department said that "there was a policy in place and the Respondent violated this policy," indicating that the policy referred to LE or GO cars. Pilecki, however, testified without prompting that NCRs were available in "several circumstances" other than this. He specified stolen vehicles, "the motion picture industry" and diplomats. There were "several others" that he could not recall and "would have to refer to the manual." This was the first time that any manual

was mentioned at trial. Previously it had been represented that the sole policy at issue was contained in the DX 2 '49.'

The Tow Operations manual was obtained and admitted into evidence. The categories mentioned by Pilecki were listed, as well as some others. In fact, "Other" was its own category. One of the subcategories there was "improper tow." The manual stated that this was when, "after investigation, it is determined that a vehicle was summonsed in error." Respondent alleged that improper towing was when someone might otherwise have been parked legally, but did not have a parking plaque, or could have had permission to park there. In Respondent's view, this essentially extended to situations where someone was parking in a SEZ near her job, or somewhere she had business, and had little choice in the matter because of all the parking restrictions nearby.

There thus was no support for the Department's claim that NCRs only were available for LE and GO vehicles and only according to DX 2. The Department's own witnesses gave nonsensical answers in this regard. For example, when asked what would happen if a government agency simply did not have an assistant commissioner – as pretty much anything other than a mayoral city agency does not – the ICO of the Manhattan Tow Pound blithely replied that the driver would have to pay the fee. He was asked directly about personally-owned vehicles yet referred to the '49' as controlling that situation. Department witnesses suggested that there was another '49' dealing with privately-owned cars. This was not produced. Also, "other meetings" dealt with Law Enforcement vehicles needing a CO's '49' – even though the '49' that in the Department's view said everything about such situations mentioned nothing of the sort. There was, in short, continuing confusion from the Department's own witnesses concerning the exact situations where an NCR would and would not be available.

In sum, the Department failed to prove that Respondent issued the NCRs without "authorization." Instead, it appeared from all the evidence that Respondent retained discretion to give the NCRs in SEZ situations that rose to the level of an "improper tow." No supposed "admission" of an error by Respondent at his official Department interview changes that conclusion. The IAB investigator testified that Respondent admitted he did not have authorization, but the interview was not admitted into evidence so it cannot be determined what Respondent actually said. Therefore, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2 charges that Respondent "wrongfully removed a summons from a vehicle which was located at the Bronx Tow Pound." At trial, the Department specified that this referred to the vehicle of Biggett, the first of the seven motorists whom Respondent issued NCRs. Biggett's car was towed for an expired registration and she received a summons for that. The investigators found that she still owed money on the summons. They questioned Respondent about it in his interview.

Once again, the interview was not admitted into evidence. The IAB investigator who testified first averred that Respondent said he "assumed" the summons was removed. Then the investigator testified that he did not conduct the interview in question: the Chief of Transportation Investigations Unit did. The IAB investigator finally settled on, "He assumed – he assumed – he – it was removed to the best of his knowledge, I believe that's what he testified to." A transcript of the interview would have helped avoid this confusing situation. Because there was insufficient evidence to determine that Respondent admitted removing the summons, he is found Not Guilty of Specification No. 2.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED

NOV 26 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER